

SSB 5728 - S AMD 158

By Senators Esser, Hargrove

ADOPTED 03/14/2003

1 Beginning on page 1, line 15, strike all of sections 101 and 102  
2 and insert the following:

3 "Sec. 101. RCW 4.22.070 and 1993 c 496 s 1 are each amended to  
4 read as follows:

5 (1) In all actions involving fault of more than one entity, the  
6 trier of fact shall determine the percentage of the total fault which  
7 is attributable to every entity which caused the claimant's damages  
8 except entities immune from liability to the claimant under Title 51  
9 RCW. The sum of the percentages of the total fault attributed to at-  
10 fault entities shall equal one hundred percent. The entities whose  
11 fault shall be determined include the claimant or person suffering  
12 personal injury or incurring property damage, defendants, third-party  
13 defendants, entities (~~((released by))~~) who have entered into a release,  
14 covenant not to sue, covenant not to enforce judgment, or similar  
15 agreement with the claimant, entities with any other individual defense  
16 against the claimant, and entities immune from liability to the  
17 claimant, but shall not include those entities immune from liability to  
18 the claimant under Title 51 RCW. Judgment shall be entered against  
19 each defendant except those entities who have (~~((been released by))~~)  
20 entered into a release, covenant not to sue, covenant not to enforce  
21 judgment, or similar agreement with the claimant or are immune from  
22 liability to the claimant or have prevailed on any other individual  
23 defense against the claimant in an amount which represents that party's  
24 proportionate share of the claimant's total damages. The liability of  
25 each defendant shall be several only and shall not be joint except:

26 (a) A party shall be responsible for the fault of another person or  
27 for payment of the proportionate share of another party where both were  
28 acting in concert or when a person was acting as an agent or servant of  
29 the party.

1 (b) If the trier of fact determines that the claimant or party  
2 suffering bodily injury or incurring property damages was not at fault,  
3 the defendants against whom judgment is entered shall be jointly and  
4 severally liable for the sum of their proportionate shares of the  
5 (~~claimants~~ ~~[claimant's]~~) claimant's total damages.

6 (2)(a) A defendant who is jointly and severally liable under one of  
7 the exceptions listed in subsection (1)(a) or (b) of this section on  
8 the basis of negligent or reckless acts or omissions shall be jointly  
9 liable for no more than twice the percentage of fault allocated to that  
10 defendant but in no case more than one hundred percent of the sum of  
11 the proportionate shares.

12 (b) A defendant who is jointly and severally liable under one of  
13 the exceptions listed in subsection (1)(a) or (b) of this section on  
14 the basis of intentional acts or omissions shall be jointly liable for  
15 the sum of the proportionate shares of the claimant's total damages.

16 (c) If a defendant is jointly and severally liable under one of the  
17 exceptions listed in subsection(~~(s)~~) (1)(a) or (~~(1)~~)(b) of this  
18 section, such defendant's rights to contribution against another  
19 jointly and severally liable defendant, and the effect of settlement by  
20 either such defendant, shall be determined under RCW 4.22.040,  
21 4.22.050, and 4.22.060.

22 (3)(a) Nothing in this section affects any cause of action relating  
23 to hazardous wastes or substances or solid waste disposal sites.

24 (b) Nothing in this section shall affect a cause of action arising  
25 from the tortious interference with contracts or business relations.

26 (c) Nothing in this section shall affect any cause of action  
27 arising from the manufacture or marketing of a fungible product in a  
28 generic form which contains no clearly identifiable shape, color, or  
29 marking.

30 **Sec. 102.** RCW 4.22.015 and 1981 c 27 s 9 are each amended to read  
31 as follows:

32 "Fault" includes acts or omissions, including misuse of a product,  
33 that are in any measure negligent (~~(or)~~), reckless, or intentional  
34 toward the person or property of the actor or others, or that subject  
35 a person to strict tort liability or liability on a product liability  
36 claim. The term also includes breach of warranty, unreasonable

1 assumption of risk, and unreasonable failure to avoid an injury or to  
2 mitigate damages. Legal requirements of causal relation apply both to  
3 fault as the basis for liability and to contributory fault.

4 A comparison of fault for any purpose under RCW 4.22.005 through  
5 (~~4.22.060~~) 4.22.070 shall involve consideration of both the nature of  
6 the conduct of the parties to the action and the extent of the causal  
7 relation between such conduct and the damages."

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